

JASON M. FRIERSON  
United States Attorney  
Nevada Bar No. 7709  
CHRISTOPHER BURTON  
Nevada Bar No. 12940  
KIMBERLY SOKOLICH  
Assistant United States Attorneys  
501 Las Vegas Boulevard South, Suite 1100  
Las Vegas, Nevada 89101  
Tel: (702) 388-6336  
[Christopher.Burton4@usdoj.gov](mailto:Christopher.Burton4@usdoj.gov)  
[Kimberly.Sokolich@usdoj.gov](mailto:Kimberly.Sokolich@usdoj.gov)  
*Attorneys for the United States*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
PAUL ENGSTROM,  
  
Defendant.

Case No. 2:21-cr-00190-ART-EJY

**Government's Response to Defendant  
Paul Engstrom's "Memorandum Re:  
Report and Recommendation (ECF No.  
139)"**

CERTIFICATION: This response is timely.

**I. Introduction**

Defendant Paul Engstrom fails to demonstrate that his reply was timely filed. However, even if Engstrom's reply were considered by this Court out of an abundance of procedural caution, Engstrom's motion should still be denied.

**II. Relevant Procedural Background**

On April 29, 2022, Engstrom filed a motion for return of property.<sup>1</sup> The government filed a timely response on May 13, 2022.<sup>2</sup> On May 26, 2022, the Report and

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<sup>1</sup> ECF No. 132.

<sup>2</sup> ECF No. 137.

1 Recommendation was issued denying Engstrom's motion.<sup>3</sup> Shortly after on the same day,  
2 Engstrom's reply was filed.<sup>4</sup>

3 Engstrom filed the instant memorandum on June 6, 2022.<sup>5</sup> The government's  
4 response follows.

### 5 III. Points and Authorities

6 Engstrom has failed to show that his reply was timely filed. In his reply, Engstrom  
7 asserted that it was timely filed under Federal Rule of Criminal Procedure 45(c) and the  
8 "prison mailbox rule".<sup>6</sup> However, Rule 45(c) provides: "Whenever a party must or may act  
9 within a specified time after being served and service is made under Rule 49(a)(4)(C), (D),  
10 and (E), 3 days are added after the period would otherwise expire under subdivision (a)."  
11 Here, the government served its response on Engstrom via mail pursuant to Federal Rule of  
12 Criminal Procedure 49(a)(4)(C), so he had three additional days within which to file his  
13 reply, making it due on May 23, 2022. And in his reply, Engstrom provided no authority to  
14 support his assertion that the "prison mailbox rule" applies.<sup>7</sup> In his subsequent  
15 memorandum, Engstrom cites to *Houston v. Lack*, 487 U.S. 266, 270, 108 S. Ct. 2379  
16 (1988).<sup>8</sup> However, *Houston* stands for the proposition that the "prison mailbox rule" applies  
17 in the context of filing deadlines for post-conviction habeas petitions.<sup>9</sup> Engstrom provides  
18 no authority (and the government is not aware of any) that supports his assertion that the  
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20 <sup>3</sup> ECF No. 139.

21 <sup>4</sup> ECF No. 140.

22 <sup>5</sup> ECF No. 141.

23 <sup>6</sup> ECF No. 140, n. 1.

24 <sup>7</sup> *Id.*

<sup>8</sup> ECF No. 141, p. 2.

<sup>9</sup> See 487 U.S. at 268 ("The question we decide in this case is whether under Federal Rule of Appellate Procedure 4(a)(1) such notices are to be considered filed at the moment of delivery to prison authorities for forwarding or at some later point in time.").

1 “prison mailbox rule” applies to pretrial criminal filings. And indeed, the government can  
 2 see good reason why such an extension of *Houston* would be improper, given that Rules 45  
 3 and 49 clearly provide for specific additional time in circumstances such as those presented  
 4 by Engstrom’s status as an incarcerated defendant representing himself.<sup>10</sup>

5 But setting aside this procedural argument, consideration of Engstrom’s reply on the  
 6 merits does not change the outcome of his motion. Engstrom’s reply focuses primarily on  
 7 18 U.S.C. 983,<sup>11</sup> but the government specifically noted that it was not proceeding with  
 8 forfeiture under that statute in this case.<sup>12</sup> In arguing for the return of his property under  
 9 Rule 41(g), Engstrom now contends the seizure of his motorcycles was not supported by  
 10 probable cause that they were in fact illegal proceeds.<sup>13</sup> But Engstrom was clear in his  
 11 original motion that he was only challenging the seizure of his motorcycles on the basis  
 12 that they were not specifically listed in Attachment B of the applicable search warrants<sup>14</sup>  
 13 and he provides no authority or evidence to support his conclusory assertion that there was  
 14 insufficient probable cause to show the motorcycles were illegal proceeds. The remainder  
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17 <sup>10</sup> As noted above, Rule 45(c) provides Engstrom three additional days given he  
 18 received service through the mail. *See also*, FED. R. CRIM. P. 49(b)(2)(B) (defining “filing”  
 19 by nonelectronic means as “delivering” the filing to the clerk or “to a judge who agrees to  
 20 accept it for filing, and who must then note the filing date on the paper and promptly send  
 it to the clerk.”); *Nigro v. Sullivan*, 40 F.3d 990, 994-95 (9th Cir. 1994) (refusing to impose  
 the “prison mailbox rule” when the applicable procedural rules clearly define what  
 constitutes a filing and the applicable deadlines).

21 <sup>11</sup> ECF No. 140, pp. 2-5.

22 <sup>12</sup> ECF No. 137, pp. 14-15 (“In this case, the government simply is not pursuing  
 forfeiture [under] Section 983[.]”).

23 <sup>13</sup> ECF No. 140, pp. 5-10.

24 <sup>14</sup> *See* ECF No. 132, pp. 19-23 (“Without litigating the underlying validity of the  
 warrants beyond that is which necessary to determine if the motorcycles were legally  
 seized, Mr. Engstrom argues the following”).

1 of Engstrom's reply is likewise insufficient to overcome the arguments and authorities in  
2 the government's response and his motion should be denied.

3 **IV. Conclusion**

4 Engstrom has failed to demonstrate that his reply was timely filed and, even if  
5 considered on the merits, his reply does not change the outcome of the filed Report and  
6 Recommendation.

7 DATED: June 10, 2022

8 Respectfully submitted,

9 JASON M. FRIERSON  
10 United States Attorney

11 /s/ Christopher Burton  
12 CHRISTOPHER BURTON  
13 KIMBERLY SOKOLICH  
14 Assistant United States Attorneys  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **Government's Response to Defendant Paul Engstrom's "Memorandum Re: Report and Recommendation (ECF No. 139)"** was served upon defendant Paul Engstrom via U.S. Certified Mail to:

Paul Engstrom 06870041  
Nevada Southern Detention Center  
2190 E. Mesquite Avenue  
Pahrump, NV 89060

**DATED** June 9, 2022.

*/s/ Christopher Burton*

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CHRISTOPHER BURTON  
Assistant United States Attorney